

1 RACHEL VAN MULLEM, COUNTY COUNSEL
2 MARY PAT BARRY, SR. DEPUTY (Bar No. 148354)
3 COUNTY OF SANTA BARBARA
4 105 E. Anapamu St., Suite 201
5 Santa Barbara, CA 93101
6 (805) 568-2950 / FAX: (805) 568-2982
7 E-mail: mpbarry@countyofsb.org

8 Attorneys for Respondent and Defendant
9 SANTA BARBARA COUNTY
10 BOARD OF SUPERVISORS

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 EXXON MOBIL CORPORATION,

Case No: 2:22-cv-03225 DMG (MRWx)

14 Petitioner and Plaintiff,

15 v.

**RESPONDENT AND DEFENDANT
SANTA BARBARA COUNTY
BOARD OF SUPERVISORS' REPLY
IN SUPPORT OF ITS MOTION FOR
PARTIAL SUMMARY JUDGMENT
AND OPPOSITION TO
PETITIONER/PLAINTIFF EXXON
MOBIL CORPORATION'S CROSS-
MOTION FOR SUMMARY
JUDGMENT**

16 SANTA BARBARA COUNTY
17 BOARD OF SUPERVISORS,

Hearing Date: June 16, 2023
Time: 2:00 p.m.

18 Respondent and Defendant,

19 and

Judge: Hon. Dolly M. Gee
Courtroom: 8C, First St. Courthouse

20 ENVIRONMENTAL DEFENSE
21 CENTER, GET OIL OUT!,
22 SANTA BARBARA COUNTY
23 ACTION NETWORK, SIERRA
24 CLUB, SURFRIDER
25 FOUNDATION, CENTER FOR
26 BIOLOGICAL DIVERSITY, AND
27 WISHTOYO FOUNDATION,

Intervenors.

1 Respondent/Defendant Santa Barbara County Board of Supervisors
2 hereby respectfully submits the below Memorandum of Points and Authorities
3 in opposition and reply to Petitioner/Plaintiff Exxon Mobil Corporation's
4 Memorandum of Points and Authorities in Support of Petitioner/Plaintiff Exxon
5 Mobil Corporation's Cross-Motion for Summary Judgment and Opposition to
6 Respondent/Defendant's and Intervenor's Motions for Summary Judgment on
7 First Cause of Action for Writ of Administrative Mandate ("Cross-Motion" or
8 "Cross-Motion & Opposition" or "Cross-Mot. & Opp'n").
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	v
MEMORANDUM OF POINTS AND AUTHORITIES	1
INTRODUCTION	1
ARGUMENT.....	2
I. THE SUBSTANTIAL EVIDENCE TEST IS THE CORRECT STANDARD OF REVIEW BECAUSE THE BOARD’S DECISION DID NOT SUBSTANTIALLY AFFECT A FUNDAMENTAL VESTED RIGHT	2
A. Exxon Has No Vested Right To Transport SYU Oil By Truck	3
B. Exxon Has No Fundamental Right To Transport SYU Oil By Truck.....	4
II. THE BOARD’S DENIAL OF THE MODIFIED PROJECT AS NONCOMPLIANT WITH THE COUNTY’S LOCAL LAND USE REGULATIONS WAS NOT AN ABUSE OF DISCRETION	8
A. Substantial Evidence Supports The Board’s Finding That The Streets And Highways Would Not Be Adequate, And Are Not Properly Designed, To Carry 78 Tanker Trucks Loaded With Crude Oil Seven-Days Per Week And 24 Hours Per Day.....	9
B. Substantial Evidence Supports The Board’s Finding That The Modified Project Would Be Detrimental To The Comfort, Convenience, General Welfare, Health And Safety Of The Neighborhood And Would Be Incompatible With The Area Surrounding The Trucking Routes	11

1	C.	The Board Did Not Fail To “Bridge The Analytic Gap”	
2		Between The Evidence And The Board’s Final	
3		Decision	14
4	III.	SUBSTANTIAL EVIDENCE SUPPORTS THE BOARD’S	
5		DETERMINATION THAT IT COULD NOT CONSIDER	
6		THE UNAVOIDABLE RISK OF AN OIL SPILL TO BE	
7		ACCEPTABLE, AND THEREFORE COULD NOT	
8		APPROVE THE MODIFIED PROJECT UNDER ANY	
9		CIRCUMSTANCES	16
10	IV.	THE BOARD DID NOT FAIL TO PROCEED IN THE	
11		MANNER REQUIRED BY LAW.....	18
12		CONCLUSION.....	20
13		CERTIFICATE OF COMPLIANCE	21
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27	COUNTY COUNSEL		
28	County of Santa Barbara		
	105 East Anapamu Street		
	Santa Barbara, CA 93101		
	(805) 568-2950		

TABLE OF AUTHORITIES

Federal Cases

<u>Acad. of Our Lady of Peace v. City of San Diego</u> , 835 F.Supp.2d 895 (S.D. Cal. 2011).....	13
<u>Cal. RSA No. 4 v. Madera County</u> , 332 F.Supp.2d 1291 (E.D. Cal. 2003).....	16
<u>E & B Natural Res. Mgmt. Corp. v. County of Alameda</u> , No. 18-cv-05857-YGR, 2020 WL 3050736 (N.D. Cal. June 8, 2020).....	8

State Cases

<u>Anderson v. City of La Mesa</u> , 118 Cal.App.3d 657 (Cal. Ct. App. 1981)	6
<u>Bixby v. Pierno</u> , 4 Cal.3d 130 (1971).....	3, 4
<u>Breneric Assoc. v. City of Del Mar</u> , 69 Cal.App.4th 166 (Cal. Ct. App. 1998)	9
<u>Cherry Valley Pass Acres & Neighbors v. City of Beaumont</u> , 190 Cal.App.4th 316 (Cal. Ct. App. 2010)	16
<u>Desmond v. County of Contra Costa</u> , 21 Cal.App.4th 330 (Cal. Ct. App. 1993)	9
<u>Gabric v. City of Rancho Palos Verdes</u> , 73 Cal.App.3d 183 (Cal. Ct. App. 1977)	19
<u>Goat Hill Tavern v. City of Costa Mesa</u> , 6 Cal.App.4th 1519 (Cal. Ct. App. 1992)	4- 8, 11, 12
<u>Guinnane v. San Francisco City Planning Comm'n</u> , 209 Cal.App.3d 732 (Cal. Ct. App. 1989)	11, 15
<u>Hardesty v. Sacramento Metro. Air Quality Mgmt. Dist.</u> , 202 Cal.App.4th 404 (Cal. Ct. App. 2011)	7, 8

1	<u>Harlow v. Carleson,</u>	
2	16 Cal. 3d 731 (1976).....	3
3	<u>Harrington v. City of Davis,</u>	
4	16 Cal.App.5th 420 (Cal Ct. App. 2017)	20
5	<u>Linborg-Dahl Investors, Inc. v. City of Garden Grove,</u>	
6	179 Cal.App.3d 956 (Cal. Ct. App. 1986)	13
7	<u>McCarthy v. Cal. Tahoe Reg'l Planning Agency,</u>	
8	129 Cal.App.3d (Cal. Ct. App. 1982)	3
9	<u>Mobil Oil Corp. v. Superior Court,</u>	
10	59 Cal.App.3d 293 (1976).....	7
11	<u>San Marcos Mobilehome Park Owners' Assn. v. City of San Marcos,</u>	
12	192 Cal.App.3d 1492 (1987).....	6
13	<u>Standard Oil Co. v. Feldstein,</u>	
14	105 Cal.App.3d 590 (1980).....	7
15	<u>The Termo Co. v. Luther,</u>	
16	169 Cal.App.4th 394 (Cal. Ct. App. 2008)	4, 5, 7, 8
17	<u>Topanga Ass'n for a Scenic Cmty. v. County of Los Angeles,</u>	
18	11 Cal.3d 506 (1974).....	14
19	State Statutes	
20	Cal. Civ. Proc. Code § 1094.5	4
21	Cal. Pub. Res. Code § 20181	16
22	State Regulations	
23	Cal. Code Regs. tit 14, § 15093(b)	16

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Petitioner/Plaintiff Exxon Mobil Corporation (“Exxon”) has filed its opposition to Respondent/Defendant Santa Barbara County Board of Supervisors’ (the “Board”) Motion for Partial Summary Judgment (“Motion” or “Mot.”). Together with its opposition, Exxon has filed a cross-motion for summary judgment on its first cause of action for writ of administrative mandate.

Exxon asserts that it developed its Santa Ynez Unit (“SYU”) “in reliance on the fact that SYU would continue to operate and have access to the market, as contemplated by both the [Final Development Plan permit (“Permit”)] and Santa Barbara policy and local law.” Cross-Mot. & Opp’n at 13. Exxon’s suggestion that the Board has interfered with Exxon’s operation of SYU, and access to the market, demonstrates Exxon’s utter denial of reality. Exxon’s operation of SYU was interrupted when an oil industry partner’s pipeline ruptured.

Two years later, Exxon applied to modify its Permit to allow interim oil transportation by truck. While its application was pending, another of Exxon’s oil industry partners announced the closure of its Santa Maria Pump Station (“SMPS”), which was the planned destination for Exxon’s proposed tanker trucks. That announcement dramatically impacted Exxon’s interim trucking proposal by eliminating SMPS as a destination for SYU crude oil.

Exxon’s posturing as the victim of County of Santa Barbara (“County”) decision makers is contrary to reason and common sense. The facts of this case demonstrate that Exxon is a business with a Permit, must adhere to Permit conditions, and is dependent on other businesses to get its product to market. That dependence on others put Exxon in its current situation.

Public comment in the administrative record in this case included the following question:

Why must we place our residents at risk when the pipeline break which made it impossible for Exxon to move oil via pipeline, as required, was the result of the oil industry cutting corners by not monitoring the pipeline company carefully and requiring updating of the pipeline and its technology?

[52 AR 023394.] The Board effectively answered this question in finding, based on substantial evidence in the administrative record and County policies, that County residents could not be placed at such risk. Summary judgment in favor of the Board and against Exxon is proper here because, as a matter of law, evidence in the administrative record permitted the Board to make the decision denying modification of Exxon's Permit to allow interim transportation of crude oil by truck.

ARGUMENT

I. THE SUBSTANTIAL EVIDENCE TEST IS THE CORRECT STANDARD OF REVIEW BECAUSE THE BOARD'S DECISION DID NOT SUBSTANTIALLY AFFECT A FUNDAMENTAL VESTED RIGHT.

In its Motion for Partial Summary Judgment on Petitioner/Plaintiff's First Cause of Action ("Motion" or "Mot."), the Board asserts that the substantial evidence test applies to Exxon's first cause of action. Mot. at 10-11. In its Cross-Motion & Opposition, Exxon argues that the standard of review applicable to the Board's Motion and to Exxon's Cross-Motion, is independent judgment review. Cross-Mot. & Opp'n at 15-18. Exxon's argument rests on Exxon's assertion that the Board's refusal to modify Exxon's Permit to allow the transport of SYU oil by truck (for a period of up to seven years) prevents Exxon from continuing its business of operating the SYU, and thereby "substantially affects Exxon's undisputed, fundamental vested right to restart and operate SYU." Cross-Mot. & Opp'n at 15, 17.

In analyzing whether an administrative decision substantially affects a fundamental vested right and therefore requires independent judgment review, courts "consider the nature of the right of the individual: whether it is a

1 fundamental and basic one, which will suffer substantial interference by the
 2 action of the administrative agency, and, if it is such a fundamental right,
 3 whether it is possessed by, and vested in, the individual or merely sought by
 4 him.” *Bixby v. Pierno*, 4 Cal.3d 130, 144 (1971).

5 **A. Exxon Has No Vested Right To Transport SYU Oil By Truck.**

6 For purposes of determining the scope of judicial review, the term
 7 “vested” denotes generally a right already possessed. *Bixby v. Pierno*, 4 Cal.3d
 8 130, 146 (1971); *McCarthy v. Cal. Tahoe Reg’l Planning Agency*, 129
 9 Cal.App.3d at 229-230 (Cal. Ct. App. 1982). “On this basis, this court has
 10 distinguished generally between applicants and recipients in determining
 11 whether a right is ‘vested’ for the limited purpose of determining the applicable
 12 scope of review.” *Harlow v. Carleson*, 16 Cal. 3d 731, 735 (1976).

13 For Exxon to be correct that it has a vested right, its existing Permit would
 14 have to authorize the transport of SYU oil by truck. It does not. Rather, the
 15 Permit requires that “[a]ll oil processed by ExxonMobil’s oil treatment facility
 16 shall be transported from the facility and the County by pipeline in a manner
 17 consistent with Santa Barbara County Local Coastal Plan Policy 6-8.” [67 AR
 18 030865.] The Permit does not authorize transport by any method other than
 19 pipeline. In fact, the Permit conditions establish that Exxon must obtain
 20 permission to transport oil by a mode other than pipeline. [67 AR 030865
 21 (“[t]ransportation by a mode other than pipeline **may be permitted** only in
 22 accordance with Coastal Zoning Ordinance Section 35-154.5(i), applicable
 23 Local Coastal Plan policies and Control Measure R-12 of the Air Quality
 24 Attainment Plan, to the extent it is applicable.” (emphasis added)).] The Permit
 25 provides that Exxon must obtain a new or modified permit if it seeks to modify
 26 any procedures contained in the Permit. [67 AR 030851 (“Project Description
 27 and Modifications”).] In compliance with the Permit, Exxon submitted its
 28 ///

1 request for modification of Permit conditions to the County for approval, and in
2 this lawsuit, challenges the County's denial of that request.

3 For purposes of determining the applicable standard of review under
4 California Code of Civil Procedure section 1094.5, Exxon is dismissive of the
5 fact that the Permit grants it no right to transport SYU oil by truck. Cross-Mot.
6 & Opp'n at 17:5-7. But this fact is part of the assessment of whether or not the
7 Board's decision affected a "vested" right. Exxon was an applicant for
8 permission to truck oil; it possessed no right to truck oil. This is why Exxon, as
9 required by its Permit, submitted an application seeking a permit modification to
10 allow transport by truck. [1 AR 146:6-14 ("[W]e're just here for the temporary
11 trucking permit. If a pipeline was available, we could resume production today
12 without the need to acquire any permits. But it's not available.")]. Exxon's status
13 as an applicant makes it clear that no vested right is implicated here. Exxon has
14 no preexisting right to truck its oil, and therefore has no vested right for review
15 purposes.

16 **B. Exxon Has No Fundamental Right To Transport SYU Oil By**
17 **Truck.**

18 "In determining whether a right is fundamental the courts do not alone
19 weigh the economic aspect of it, but the effect of it in human terms and the
20 importance of it to the individual in the life situation." *Bixby*, 4 Cal.3d at 144. In
21 analyzing the fundamental nature of an asserted right, the California Supreme
22 Court manifests "slighter sensitivity to the preservation of purely economic
23 privileges." *Id.* at 145.

24 To persuade the Court to apply the independent judgment test, Exxon
25 relies on *Goat Hill Tavern v. City of Costa Mesa*, 6 Cal.App.4th 1519 (Cal. Ct.
26 App. 1992) and *The Termo Co. v. Luther*, 169 Cal.App.4th 394 (Cal. Ct. App.
27 2008). Cross-Mot. & Opp'n at 15-17. These two cases, both of which concerned
28 applications for conditional use permits rather than modifications of

1 development permits, are easily distinguished because denial of Exxon’s request
2 to modify its permit does not end Exxon’s SYU business. In fact, Exxon
3 concedes that unlike the circumstances in *Goat Hill Tavern* and *The Termo Co.*,
4 the decision at issue in this case does not amount to government action putting
5 Exxon out of business. Exxon is careful to state only that the Board’s decision
6 prevents Exxon from transporting oil to market “for the foreseeable future” and
7 “threatens” (but does not eliminate) SYU’s continued existence. Cross-Mot. &
8 Opp’n at 15.

9 The fact is that denial of Exxon’s application means Exxon remains able
10 to transport its SYU oil by pipeline pursuant to its Permit. And Exxon expects to
11 resume pipeline transport. [65 AR 29886 (“ExxonMobil is seeking a permit that
12 would end when the transport pipeline becomes available.”).] This is evident
13 from Exxon’s action of applying for a permit modification to last just seven
14 years or until a pipeline becomes available, whichever is shorter. [37 AR 014841
15 (SEIR section 1.0.)] Notably, Exxon informs the Court that via a subsidiary, it
16 now owns the pipelines (Lines 901 and 903) formerly owned by Plains All
17 American Pipeline, LLC (“Plains”). Cross-Mot. & Opp’n at 3 n.2.¹ This fact
18 indicates that Exxon expects to return to transporting SYU oil by pipeline in the
19 foreseeable future.

20 The decision in *Goat Hill Tavern* was based on the unique facts presented
21 by that case. *Goat Hill Tavern*, 6 Cal.App.4th at 1529-1530. Such facts are not
22 present here. In *Goat Hill Tavern*, a tavern owner sought a writ of administrative
23 mandate ordering the city council to renew a conditional use permit. The unique
24 facts included that the tavern had been in business under a prior owner since
25 before the enactment of the current zoning ordinance and therefore existed as a

26
27 ¹ Line 901 ruptured in May, 2015. Plains then shut down Lines 901 and
28 903. Exxon’s dependence on Plains left it with no pipeline to transport SYU oil.
Motion at 3:5-13.

1 legal nonconforming use. *Id.* at 1522. A conditional use permit was issued
2 allowing the tavern to have a beer garden. *Id.* Later, the owner applied for a
3 conditional use permit for an unpermitted expansion that added a game room to
4 the tavern. When the City of Costa Mesa discovered that the conditional use
5 permit had expired, the owner requested a renewal. Ultimately, an application
6 for renewal was denied and the tavern sought a writ of administrative mandamus
7 compelling the city to renew the permit. *Id.* at 1525. The trial court applied the
8 independent judgment test. *Id.* The threshold issue on appeal was whether the
9 tavern owner had a vested fundamental right to continue operation of the tavern.
10 *Id.* at 1526.

11 The court acknowledged that “courts have rarely upheld the application of
12 the independent judgment test to land use decisions.” *Id.* at 1527. In those rare
13 instances the rights involved have been “classic vested rights,” e.g. where a
14 plaintiff built her home in good faith reliance on a building permit issued by the
15 city and was denied a variance after the city claimed an ordinance required a
16 different set back than that allowed under the permit. *Id.* (discussing *Anderson v.*
17 *City of La Mesa*, 118 Cal.App.3d 657, 660 (Cal. Ct. App. 1981). The court
18 concluded that the tavern owner did have such a right due to the tavern’s
19 operation as a legal non-conforming use for years, notwithstanding the more
20 recent addition of the game room by the conditional use permit. *Id.* at 1526. On
21 these unique facts, the court applied the independent judgment standard of
22 review. *Id.* at 1527.

23 Exxon’s circumstances have no similarity to the tavern owner in *Goat Hill*
24 *Tavern* because there is no evidence in record showing that the Board’s denial of
25 interim trucking puts Exxon out of business. On these facts, Exxon cannot be
26 deemed to have a fundamental right. In *Goat Hill Tavern*, the court reviewed
27 cases where the independent judgement test did not apply. *Goat Hill Tavern*, 6
28 Cal.App.4th at 1527-1528 (discussing *San Marcos Mobilehome Park Owners’*

1 *Assn. v. City of San Marcos*, 192 Cal.App.3d 1492 (1987); *Mobil Oil Corp. v.*
2 *Superior Court*, 59 Cal.App.3d 293 (1976); *Standard Oil Co. v. Feldstein*, 105
3 Cal.App.3d 590 (1980)). In those cases, “the courts held the administrative
4 actions implicated purely economic interests because there were no contentions,
5 nor evidence, that the actions would force the companies out of business or
6 cause them to lose their property.” *Id.* at 1528. The tavern owner’s case was
7 different because “[t]he avowed purpose and result of the city’s decision is to
8 shut down Goat Hill Tavern.” *Id.*

9 Similarly, *The Termo Co.* case is not instructive here. In *The Termo Co.*,
10 petitioners were two companies challenging an administrative order directing the
11 plugging and abandonment of 28 unabandoned oil wells. The wells were owned
12 or operated by petitioners and had been idle for seven years. *The Termo Co.*, 169
13 Cal.App.4th at 399-400. The appellate court determined that the lower court
14 erred in applying the substantial evidence standard of review. That conclusion
15 was based on the fact that the decision eliminated the right of the owners of the
16 oil wells to bring the wells back on line, operate them, and extract oil, i.e. the
17 decision shut down a business and terminated the right to produce oil. *Id.* at 407.
18 The court applied the principles of *Goat Hill Tavern* and determined that a
19 fundamental vested right was at issue so that the independent judgment applied.
20 *Id.* at 408.

21 This case is more akin to *Hardesty v. Sacramento Metro. Air Quality*
22 *Mgmt. Dist.*, 202 Cal.App.4th 404 (Cal. Ct. App. 2011). In *Hardesty*, owners of
23 an open-pit mining operation challenged an order directing them to cease
24 operation of their equipment until they obtained a permit from the Sacramento
25 Metropolitan Air Quality Management District. *Hardesty*, 202 Cal.App.4th at
26 408. The owners’ writ petition was denied and they appealed, arguing that the
27 trial court’s failure to use the independent judgment standard was error. *Id.* The
28 appellate court affirmed the trial court’s order denying the writ petition, finding

1 “nothing in the administrative record to indicate that [plaintiff] w[ould] be
2 driven out of business by the requirement that it secure a permit from the
3 District.” *Id.* at 416. The appellate court held the owners had no fundamental
4 vested right to emit air pollution without a permit and that the trial court had
5 properly used the substantial evidence standard. *Id.* at 408. The *Hardesty* court
6 found *Goat Hill Tavern* and *The Termo Co.* unpersuasive. *Id.* at 416-417.

7 Exxon has presented no evidence that denial of the interim trucking plan
8 would do anything more than leave Exxon in the same position it has been in
9 since the pipeline rupture. There is no evidence in the record that denial of
10 Exxon’s application to modify the Permit to allow interim trucking will shut
11 down Exxon or force Exxon out of business. Exxon confronts the same
12 economic costs it has handled since the pipeline ruptured, and has failed to show
13 harm to its economic interests sufficient to confer a fundamental vested right.
14 *See E & B Natural Res. Mgmt. Corp. v. County of Alameda*, Case No. 18-cv-
15 05857-YGR, 2020 WL 3050736, *5 n.7 (N.D. Cal. June 8, 2020) (finding *The*
16 *Termo Co.* unpersuasive).

17 Exxon has no vested right affected by the Board’s decision. Exxon has no
18 fundamental right affected by the Board’s decision. For these reasons, the
19 independent judgment test does not apply, and the Court should apply the
20 substantial evidence test in analyzing the Motion and Cross-Motion.

21 **II. THE BOARD’S DENIAL OF THE MODIFIED PROJECT AS**
22 **NONCOMPLIANT WITH THE COUNTY’S LOCAL LAND USE**
23 **REGULATIONS WAS NOT AN ABUSE OF DISCRETION.**

24 In its Motion, the Board established that substantial evidence supported
25 the Board’s administrative findings. Mot. at 11-18. In its Cross-Motion and
26 Opposition, Exxon argues the contrary. Cross-Mot. & Opp’n at 32-35. The
27 Board’s Motion sets forth the Board’s arguments that both support its Motion
28 and, consequently, oppose Exxon’s Cross-Motion and are therefore incorporated
by reference.

1 Exxon's burden under the substantial evidence standard of review is to
2 show that all of the Board's findings lack support. If any finding in support of
3 the Board's decision is supported by substantial evidence, the Board's rejection
4 of Exxon's application to modify the Permit must be upheld. *Breneric Assoc. v.*
5 *City of Del Mar*, 69 Cal.App.4th 166, 176 (Cal. Ct. App. 1998).

6 "Substantial evidence" has been defined in two ways: (1) as evidence that
7 is reasonable in nature, credible, and of solid value; and (2) as relevant evidence
8 that a reasonable mind might accept as adequate to support a conclusion.
9 *Desmond v. County of Contra Costa*, 21 Cal.App.4th 330, 335 (Cal. Ct. App.
10 1993).

11 **A. Substantial Evidence Supports The Board's Finding That The**
12 **Streets And Highways Would Not Be Adequate, And Are Not**
13 **Properly Designed, To Carry 78 Tanker Trucks Loaded With**
14 **Crude Oil Seven-Days Per Week And 24 Hours Per Day.**

15 Exxon asserts that the Board's determination that it could not find that
16 streets and highways would be adequate and properly designed to carry the type
17 and quantity of traffic generated by the Modified Project is not supported by
18 substantial evidence. Cross-Mot. & Opp'n at 20-24. Exxon argues that these
19 findings, made under the County's Land Use and Development Code ("LUDC")
20 Section 35.82.080.E.1(c) and Article II Coastal Zoning Ordinance ("CZO")
21 Section 35-174.7.1(c), show that the Board did not consider all of the relevant
22 evidence before it, so that its findings are not supported by substantial evidence
23 in light of the whole record. Cross-Mot. & Opp'n at 32.

24 The evidence Exxon contends the Board did not consider was contained
25 in Section 4.5 of the Revised Final Supplemental Environmental Impact Report
26 ("SEIR") entitled "Transportation and Circulation" and in the Final Traffic &
27 Circulation Study dated February 19, 2019, which was prepared by Associated
28 Transportation Engineers ("ATE"). Cross-Mot. & Opp'n at 33 (citing 38 AR
015090-015126 and 40 AR 017639-017675). As stated in the SEIR, major

1 portions of Section 4.5 were based on ATE's Final Traffic & Circulation Study.
2 [38 AR 015087.] Exxon also cites two tables in the SEIR's Section 4.3, which is
3 entitled "Hazardous Materials and Risk of Upset." Cross Mot. & Opp'n at 21
4 (Figure 4.3-13), 33 (citing 38 AR 015018-015020). These tables do not
5 document risks of traffic accidents resulting in fatalities or injuries. Rather, they
6 document "societal risk profiles (known as F/N curves) to determine the
7 significance of hazardous material releases" and concern risks associated with
8 both collision and non-collision incidents resulting in hazardous materials
9 releases. [38 AR 015017-015018.]

10 Exxon asserts that the Board cast aside the content of Section 4.5 of the
11 SEIR in favor of "anecdotal evidence" presented by the public. Cross Mot. &
12 Opp'n at 33:8-10. Exxon overlooks that the Board considered Section 4.5 and
13 specifically referenced that part of the SEIR in its findings. [1 AR 12 (citing 38
14 AR 015093; 38 AR 015106-015108).] The Board recognized that the Modified
15 Project, following the closure of SMPS, would put 78 loaded tanker trucks on
16 Calle Real, Highway 101, and State Route 166. As referenced by the Board, the
17 loaded tanker trucks would travel segments of Highway 101 and State Route
18 166 that were determined to have accident rates above the state average. [1 AR
19 12.]

20 The Final Traffic & Circulation Study was submitted by ATE on February
21 19, 2019. A Traffic Study Addendum, dated November 19, 2019, responded to
22 comments made by Caltrans after its review of the draft SEIR. [41 AR 017768-
23 017802.] These reports were based on data from 2018 and earlier. [38 AR
24 015090.] Section 4.5 of the SEIR does not discuss or analyze specific oil tanker
25 accidents. The Board, however, considered the whole record. Mot. at 11-18.

26 Consideration of the whole record required the Board to consider public
27 comment from local residents describing their lived experience of driving on
28 State Route 166. Local residents described current road conditions of State

1 Route 166. Mot. at 14. To the extent Exxon contends that the concerns about
2 traffic and road safety expressed by County residents, particularly those who
3 live and work in the Cuyama Valley, do not support the Board's findings, the
4 argument is specious. Those concerns fall well within the domain of the public
5 interest and welfare. *Guinnane v. San Francisco City Planning Comm'n*, 209
6 Cal.App.3d 732, 743 (Cal. Ct. App. 1989).

7 Evidence of actual accidents on State Route 166 involving tanker trucks
8 provided the Board with a specific factual foundation corroborating the dangers
9 described by members of the public. Mot. at 15-16. [58 AR 025593-025637.]
10 The Board's decision was influenced by evidence in the record making it clear
11 that SMPS would soon close, so that all 78 tanker trucks leaving LFC every 24-
12 hours would have to travel State Route 166. [1 AR 000156:3-23; 1 AR
13 000158:5-17; 1 AR 000175:5-14.] Evidence in the record considered by the
14 Board met both definitions of "substantial evidence" because it was reasonable
15 in nature, credible, of solid value, and was relevant evidence that a reasonable
16 mind might accept as adequate to support a conclusion.

17 **B. Substantial Evidence Supports The Board's Finding That The**
18 **Modified Project Would Be Detrimental To The Comfort,**
19 **Convenience, General Welfare, Health And Safety Of The**
Neighborhood And Would Be Incompatible With The Area
Surrounding The Trucking Routes.

20 Exxon argues that the Board's inability to find that the Modified Project
21 would not be detrimental to the comfort, convenience, general welfare, health,
22 and safety of the neighborhood and would not be incompatible with the
23 surrounding area was based on evidence that "was not specific to the Project."
24 Cross-Mot. & Opp'n at 24:12-15. Exxon states that evidence the Board relied on
25 regarding the behavior of other drivers, accident rates, and past oil tanker
26 accidents that did not involve Exxon, is all evidence providing no valid basis for
27 denial. Exxon's reliance on *Goat Hill Tavern* is misplaced. In *Goat Hill Tavern*,
28 the court found that a tavern's use permit could be revoked if such a business is

1 a public nuisance. However, the court found that police records introduced by
2 the tavern owner showed that the number of incidents reported at the tavern
3 were less than the number at most other bars and restaurants in the area so the
4 evidence did not support a finding that the tavern, rather than other possible
5 causes, were creating a public nuisance. *Goat Hill Tavern*, 6 Cal.App.4th at
6 1531. Here, the very facts that Exxon cannot control its contract truck drivers
7 beyond the mitigation measures proposed under Risk Factor number one, and
8 cannot control other drivers or road conditions, are the facts that support denial
9 of the Modified Project.

10 Exxon, with no evidence to support its argument, states that measures
11 intended to mitigate the risks presented by the proposed project were ignored by
12 the Board. Cross-Mot. & Opp'n at 24-25. These measures include a truck hazard
13 mitigation plan intended to address an accidental oil spill that could generate
14 risks to public safety by exposing the public to hazards from truck transport of
15 crude oil. [38 AR 015015.] While Exxon summarizes mitigation measures 1- 6
16 (Cross-Mot. & Opp'n at 25-27), the SEIR states that only one of these (the truck
17 hazard mitigation plan), if implemented, would reduce the likelihood of a truck
18 accident. [38 AR 015032.] The others (Mitigation Measures RISK 2 through
19 Risk 6), are relevant only to improving the response to an oil spill after it
20 happens. [38 AR 015032.]

21 Exxon is well aware that to be eligible for modification of its Permit to
22 allow non-pipeline transport, it had to mitigate the environmental impacts of the
23 truck transportation mode to the maximum extent feasible. Board's Request to
24 Take Judicial Notice, Ex. A at 9-6 (CZO 35-154.5(i)(2)) (Doc. No. 35-1.).
25 Meeting that requirement did not require approval of the project.²

26
27 ² Without support, Exxon states that the Board's "delay of the Project"
28 moots the Modified Project condition requiring Exxon to truck oil only to
SMPS. Cross-Mot. & Opp'n at 26 n.11. On the contrary, any delay arose when

1 Similarly, contrary to Exxon’s argument, County policy does not
2 “recognize that ExxonMobil must have market access.” Cross-Mot. & Opp’n at
3 5. In connection with oil transportation, the County’s Coastal Land Use Plan
4 states that “[t]he County should assure that producers have access to competitive
5 markets, **however, the County need not provide unlimited flexibility to all**
6 **producers.**” Exxon Request to Take Judicial Notice, Ex. A at 67. (Doc. No. 45-
7 1.) The same County policy provides that once pipelines are constructed and
8 operational to the refining center of a producer’s choice, “pipelines shall be the
9 required mode of transportation because they are less environmentally damaging
10 than other modes of transportation.” *Id.* at 66.

11 Exxon makes much of the fact that County Staff recommended that the
12 Planning Commission approve Exxon’s Modified Project. But County Staff are
13 not decision makers, and neither the Planning Commission nor the Board were
14 bound by Staff’s assessment. *See Linborg-Dahl Investors, Inc. v. City of Garden*
15 *Grove*, 179 Cal.App.3d 956, 959 n.1 (Cal. Ct. App. 1986); *Acad. of Our Lady of*
16 *Peace v. City of San Diego*, 835 F.Supp.2d 895, 905-906 (S.D. Cal. 2011)
17 (rejecting contention that substantial evidence in favor of project approval
18 existed based on prior approvals of City Staff and Planning Commission).

19 As stated in the SEIR, while the Staff Report contains an analysis of a
20 project’s consistency with applicable local plans and policies, and that analysis
21 serves as the basis for the County decision makers’ deliberations, “[t]he final
22 determination of consistency or inconsistency with adopted plans rests with
23 County decision makers.” [38 AR 015053.] The Planning Commission, after two
24 public hearings, deliberated and recommended that the Board deny the Modified
25

26 Exxon’s oil industry partner, Phillips 66, announced its plan to shut down the
27 SMPS, which caused Exxon to drop its project from the Planning Commission’s
28 calendar and created the need for revision to the 2020 Proposed Final SEIR. [37
AR 014582-014583.]

1 Project on grounds that it could not make necessary findings under County plans
2 and policies. [37 AR 014562-014566; 60 AR 026388-026591; 60 AR 026323-
3 026366.] As set forth in the County's Motion substantial evidence supports the
4 Board's denial of the Modified Project because findings required pursuant to the
5 LUDC and CZO could not be made. Mot. at 11-18.

6 **C. The Board Did Not Fail To "Bridge The Analytic Gap"**
7 **Between The Evidence And The Board's Final Decision.**

8 Exxon argues that the Board failed to "set forth findings to bridge the
9 analytic gap between the raw evidence and ultimate decision" to deny Exxon's
10 Modified Proposal (Cross-Mot. & Opp'n at 34; citing *Topanga Ass'n for a*
11 *Scenic Cmty. v. County of Los Angeles*, 11 Cal.3d 506, 515 (1974)). But the
12 Board's findings meet the requirement set forth in *Topanga Ass'n for a Scenic*
13 *Cmty.*, and allow the Court to understand both the Board's consideration of the
14 evidence before it, and the Board's analysis supporting its decision. *Topanga*
15 *Ass'n for a Scenic Cmty.*, 11 Cal.3d at 516.

16 Evidence in the record provided details of tanker truck accidents in
17 California from February 2000 to August 2021. [57 AR 025302 n.101; 57 AR
18 025303-025313; 58 AR 025593-025637]. Significantly, the Board relied on
19 evidence in the record of four tanker truck accidents that could not have been
20 considered in Section 4.5 of the SEIR (Transportation and Circulation) because
21 the ATE traffic study relied on data from a time period prior to those accidents.
22 [57 AR 025307-025311.]

23 There is clearly a contradiction between ATE's conclusion that the annual
24 probability of an oil spill from a truck accident for all trucks going to Pentland
25 Terminal would be 1 in 17 years with the actual data in the administrative record
26 showing that four tanker truck accidents occurred on the route to Pentland
27 Terminal during the period from May 20, 2018 to April 16, 2020. [37 AR
28 014585-014586; 57 AR 025309-025310; 58 AR 025630 (March 21, 2020

1 accident); 57 AR 025304-25305; 57 AR 025309; 58 AR 025615 (May 20, 2018
2 accident); 57 AR 025305; 57 AR 025309; 58 AR 025609; 58 AR 025619
3 (September 13, 2016 and December 12, 2018 accidents); 57 AR 025308; 2 AR
4 000730-000731 (EDC Crash map).] In other words, four tanker truck accidents
5 occurred on the planned truck route to Pentland Terminal over a two-year
6 period. As pointed out in public comment, the actual data demonstrates the
7 unreliability of the probabilities set forth in the ATE study. [57 AR 025312.]

8 Exxon makes scant reference to the evidence relied on by the Board,
9 particularly the evidence of the March 21, 2020 tanker truck accident resulting
10 in an oil spill into the Cuyama River. [1 AR 12; 38 AR 014974-014979.] Nor
11 does Exxon mention the history of the four tanker truck accidents on Highway
12 166 between September 13, 2016 and March 21, 2020.

13 In anticipation of Exxon's reliance on Staff's draft findings for approval,
14 the Board showed that its analysis of the required findings regarding streets &
15 highways under LUDC section 35.82.080.E.1(c) and CZO section 35-174.7.1(c)
16 was broader than what Staff referenced as support for the draft findings. Mot. at
17 14. Exxon disputes this (Cross-Mot. & Opp'n at 23) but it is supported by the
18 draft findings. In both the draft findings and Table 6, [37 AR 01462; 37 AR
19 014597 (Table 6: "No improvements to roadways within LFC, along U.S.
20 Highway 101, or State Route 166 are required for the Project, the existing
21 roadways are adequate for the proposed development").]

22 Fundamentally, Exxon's position is that because the identified
23 environmental impacts of the Modified Project would be mitigated to the
24 maximum extent feasible, denial of the Modified Project was an abuse of
25 discretion. But "the environmental review process is not the same as the permit
26 approval process ... An environmental review document is an informational
27 document, not a decisionmaking document." *Guinnane*, 209 Cal.App.3d at 742.
28 The Board relied on the SEIR and all other materials in the whole of the

1 administrative record to reach its decision. As discussed here and in the Motion,
2 substantial evidence supports that Board's findings and those findings support
3 the Board's decision.

4 **III. SUBSTANTIAL EVIDENCE SUPPORTS THE BOARD'S**
5 **DETERMINATION THAT IT COULD NOT CONSIDER THE**
6 **UNAVOIDABLE RISK OF AN OIL SPILL TO BE ACCEPTABLE,**
7 **AND THEREFORE COULD NOT APPROVE THE MODIFIED**
8 **PROJECT UNDER ANY CIRCUMSTANCES.**

9 As set forth in the Board's Motion, substantial evidence supports the
10 Board's finding that specific benefits of the Modified Project did not outweigh
11 the significant environmental effect of a crude oil spill. Mot. at 18-22; Cal. Pub.
12 Res. Code § 20181; Cal. Code Regs. tit 14, § 15093(b). In opposition, Exxon
13 argues that the record contains ample evidence to support a statement of
14 overriding considerations. Cross-Mot. & Opp'n at 27-32. But even if that were
15 so, it does not mean that the Board abused its discretion in finding the opposite
16 based on substantial evidence. *Cal. RSA No. 4 v. Madera County*, 332 F.Supp.2d
17 1291,1302 (E.D. Cal. 2003) (“[t]he possibility of drawing two inconsistent
18 conclusions from the evidence does not prevent an administrative agency's
19 finding from being supported by substantial evidence.”).

20 The Board's decision whether to approve Exxon's Modified Project
21 despite its significant environmental impacts was a discretionary policy
22 decision. *Cherry Valley Pass Acres & Neighbors v. City of Beaumont*, 190
23 Cal.App.4th 316, 357 (Cal. Ct. App. 2010).

24 Exxon argues that the Board “chose to dismiss relevant information about
25 the advantages the Project would bring to the County.” Cross-Mot. & Opp'n at
26 32. However, Exxon points to no evidence to support this argument and the
27 record shows that the Board discussed the benefits that Exxon asserted the
28 Modified Project would bring the County. [1 AR 10-11.]

///

1 Exxon does not dispute that evidence in the record established that the
2 Modified Project would produce less than one percent of the crude oil usage in
3 California. [60 AR 026522:8-17; 60 AR 026569:22-60 AR 026570:13; 60 AR
4 026356:2-19.] Instead, Exxon merely argues that the Board “should have
5 considered” how the Modified Project could support California’s energy
6 independence. Cross-Mot. & Opp’n at 28. But the Board’s assessment of the
7 small impact the Modified Project would have obviously involved balancing the
8 unavoidable impact of an oil spill from trucking against the benefit of
9 contributing 0.7 percent of the oil usage in California.

10 Exxon engages in selective quotation of the Board’s findings regarding
11 the Modified Project’s impact on the environment, which is misleading. Cross
12 Mot. & Opp’n at 29. A more complete review of the Board’s position shows that
13 the Board found that the Modified Project would have “significant local and
14 regional environmental impacts” because it would be both “detrimental to the
15 environmental [*sic*] generally” and to locations along the truck route in the
16 County, which would “bear the brunt of environmental impacts, including
17 potential significant impacts from spills and other localized air impacts.” [1 AR
18 7.]

19 Exxon argues that its Modified Project would return jobs and income to
20 the County during the seven-years or less period of interim trucking. Exxon jobs
21 and Exxon tax payments were interrupted by a pipeline rupture. There is no
22 evidence in the record that the SYU’s subsequent shut-in status has caused the
23 County economic harm such that the County has had to close schools or reduce
24 law enforcement services or otherwise cut back on County services. Exxon
25 points to no evidence in the record that the County, in the interim between 2022
26 and 2029, has a dire need for the jobs or tax income to be generated by Exxon’s
27 restart of the SYU. The Board denied an interim project. Exxon’s expectation,
28 inherent in the interim nature of its Modified Project, is that it will restart the

1 SYU and be transporting oil by pipeline pursuant to its Permit sometime in the
2 next seven years.

3 Exxon argues that the Board failed to consider the “benefit” of the
4 Modified Project that concerns Exxon’s contribution to the Coastal Resource
5 Enhancement Fund (“CERF”). Cross-Mot. & Opp’n at 31. As stated in Permit
6 condition X-8, CERF was established to “offset the impacts of increased
7 industrial development associated with cumulative oil development” in the
8 County. [67 AR 030877.] Exxon’s Permit requires Exxon to make payments to
9 CERF. It is difficult to understand how denying the Modified Project, and
10 thereby eliminating the risk of a Class I impact, could be outweighed by
11 allowing crude oil trucking in order to receive money for a fund designed to
12 offset the very impacts caused by the oil trucking.

13 The Board recognized that the Modified Project is an interim project. The
14 Board considered the short-term benefits of the Modified Project. Exxon has not,
15 and cannot, show an abuse of discretion in the Board’s determination that no
16 overriding benefits of the Modified Project outweighed the unavoidable
17 significant environmental impact of an oil spill.

18 **IV. THE BOARD DID NOT FAIL TO PROCEED IN THE**
19 **MANNER REQUIRED BY LAW.**

20 Exxon’s final argument to support its Cross-Motion is that the Board
21 abused its discretion because it failed to proceed in the manner required by law.
22 Cross-Mot. & Opp’n at 35-39. According to Exxon, the Board’s failure was that
23 in denying Exxon’s Modified Project, the Board “rewrote *sub silentio* the
24 County policy and law to eliminate the possibility of trucking crude oil.” Cross-
25 Mot. & Opp’n at 36:9-10.

26 Exxon’s position is pure argument lacking any factual support. As Exxon
27 recognized in its papers, most oil producers in the County transport oil by truck.
28 Cross Mot. & Opp’n at 34:1-2. [1 AR 000152:12-18.] Exxon’s argument is

1 flawed because Exxon treats the decision before the Board as a ministerial
2 decision, rather than the discretionary decision it was. As part of this effort,
3 Exxon relies on *Gabric v. City of Rancho Palos Verdes*, 73 Cal.App.3d 183
4 (Cal. Ct. App. 1977). Cross-Mot. & Opp’n at 37-38. The *Gabric* case has no
5 application here, however, because in this case Exxon’s application to modify its
6 permit required environmental review and was subject to the Board’s discretion.
7 Exxon fails to show that the Board ignored any County laws or otherwise
8 misapplied the law. *See Gabric*, 73 Cal.App.3d at 188-192.

9 Under the County’s Coastal Zoning Ordinance, a permit for modifying
10 crude oil processing or related facilities to allow transportation of crude oil by a
11 mode other than pipeline is discretionary (“may be permitted”). Board’s Request
12 to Take Judicial Notice, Ex. A at 9-6 (CZO § 35-154.5(i)). A project subject to
13 the discretionary decision whether to allow transportation by a mode other than
14 pipeline must meet the requirements set forth in Section 35-154.5(i)(1)-(4) to
15 even be considered. *Id.* Exxon asserts that because its Modified Project met the
16 requirements for consideration, the Board could not have proceeded in the
17 manner required by law when denying the Modified Project. Rather, according
18 to Exxon, the three Board members who voted for denial “were improperly
19 influenced by their policy motivations to push the oil industry out of Santa
20 Barbara County.” Cross-Mot. & Opp’n at 36:24-26.

21 To support its argument, Exxon misleads by quoting partial sentences
22 spoken by Supervisors Hart, Williams, and Hartmann during deliberations on
23 March 8, 2022. Cross-Mot. & Opp’n at 37:10-20. A review of the entirety of
24 statements made by Supervisors Hart [1 AR 000166:15-000172:3; 1 AR
25 000178:9-19; 1 AR 000179:2-3], Williams [1 AR 000155:7 – 1 AR 000160:16;
26 1 AR 174:5-000175:14], and Hartmann [1 AR 000180:18 – 000182:24], which
27 explain their respective decisions to deny Exxon’s Modified Project,
28 demonstrates that these decisions were based on evidence in the record and were

1 specifically focused on Exxon's request to modify its Permit. [1 AR 000178:13-
2 19; 1 AR 000179:16-000180:3.] Just as in *Harrington v. City of Davis*, 16
3 Cal.App.5th 420 (Cal. Ct. App. 2017), where the appellant implied that
4 "backroom dealings" had produced a city council's permit decision, Exxon fails
5 to demonstrate, by reference to the record, that the Board bowed to political
6 pressure in denying Exxon's application to modify its Permit, or otherwise
7 abused its discretion. *Harrington*, 16 Cal.App.5th at 436. Exxon's challenge to
8 the Board's decision on grounds that the Board failed to proceed in the manner
9 required by law should be rejected.

10 CONCLUSION

11 For all of the reasons set forth in its Motion for Partial Summary
12 Judgment and above, Respondent/Defendant respectfully requests that this Court
13 grant Respondent/Defendant's Motion for Partial Summary Judgment and deny
14 Petitioner/Plaintiff's Cross-Motion for Summary Judgment as to
15 Petitioner/Plaintiff's first cause of action.

16
17 Dated: May 1, 2023

RACHEL VAN MULLEM
COUNTY COUNSEL

18
19 By: /S/ - Mary Pat Barry
20 Mary Pat Barry
21 Senior Deputy County Counsel
22 Attorneys for Respondent and Defendant,
23 SANTA BARBARA COUNTY
24 BOARD OF SUPERVISORS
25
26
27
28

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Respondent and Defendant Santa Barbara County Board of Supervisors, certifies that this brief contains 6,430 words, which complies with the word limit of L.R. 11-6.1

Dated: May 1, 2023

RACHEL VAN MULLEM
COUNTY COUNSEL

By: /S/ - Mary Pat Barry
Mary Pat Barry
Senior Deputy County Counsel
Attorneys for Respondent and Defendant,
SANTA BARBARA COUNTY
BOARD OF SUPERVISORS